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APR 26 2017

April 18, 2017

Acorn Engineering Co. Attn: Eileen Arrieta, Corp. Director of Transportation 15125 Proctor, Bldg 1 City of Industry, CA 91746	Acorn Engineering Company c/o Donald E Morris Agent for Service of Process 15125 E Proctor Ave City of Industry, CA 91746
Acorn Engineering Co. Attn: Eileen Arrieta, Corp. Director of Transportation PO Box 3527 City of Industry, CA 91744	
Scott Pruitt, Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Samuel Unger, Executive Officer Regional Water Quality Control Board Los Angeles Region 320 West Fourth Street, Suite 200 Los Angeles, CA 90013
Alexis Strauss, Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Thomas Howard, Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Personal Privacy a citizen of the State of California. This letter is to give notice that Brodsky Smith, on Person behalf, intends to file a civil action against Acorn Engineering Co. ("Acorn Engineering") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Acorn Engineering's facility located at 15125 E. Proctor Ave., Bldg 1, City of Industry, CA 91746 (the "Facility").

Perso is a citizen of the State of California who is concerned with the environmental health the San Gabriel River, and uses and enjoys the waters of the San Gabriel River, its inflows, and other areas of the overall San Gabriel River Watershed, of which the San Gabriel River is a part. Person use and enjoyment of these waters are negatively affected by the pollution caused by Acorn Engineering's operations. Additionally, Perso acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Acorn Engineering's unlawful discharge of pollutants from the Facility via indirect flow into the San Gabriel River and the overall San Gabriel River Watershed.[1] Specifically, investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit No CAS000001 [State Water Resources Control Board] Water Quality Orders No. 2014-0057-DWQ (the "Industrial Stormwater Permit") and 92-12-DWQ (as amended by Order No. 97-03-DWQ) (the "Previous Industrial Stormwater Permit").[2]

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Acorn Engineering of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and the Intent to File Suit, Pers intends to file suit in federal court against Acorn Engineering under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Perso is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Acorn Engineering contact Person attorneys at Brodsky & Smith within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

Acorn Engineering's Facility is located at 15125 E. Proctor Ave., Bldg 1, City of Industry, California. At the Facility, Acorn Engineering operates as a manufacturer of metal plumbing fixtures, products and systems for institutional and commercial markets. At the Facility, the following industrial activities occur: (i) stainless steel sheet metal fabrication of plumbing fixtures; (ii) powder coating; (iii) abrasive blast cabinets; (iv) solid resin molding; (v) material handling and transport; (vi) raw materials storage and handling; (vii) machine shop use; (viii) brush painting; (ix) wood shop use; (x) warehousing of plumbing fixtures; and (xi) scrap metal storage and handling. Other activities carried out in the regular course of business at the facility include storage of fuel and other oils, maintenance, equipment storage, and waste storage. Repair and maintenance activities carried out at the facility include, but are not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial duties. Possible pollutants from the Facility include total suspended solids ("TSS"), Nitrate plus Nitrite Nitrogen, waste oils, lubricants, fuel, trash, debris, hazardous materials, oil and grease, pH, heavy metals such as Aluminum, Iron, and Zinc, and other pollutants. Stormwater from the Facility discharges, indirectly, into the San Gabriel River.

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[1] Acorn Engineering's Notice of Intent ("NOI") filed with the Los Angeles Regional Water Quality Control Board ("LARWQCB") lists the receiving waters of the Facility as the "San Gabriel River" via indirect flow. Upon investigation, it is Perso s knowledge and belief that the most immediate receiving water of the Facility is the San Gabriel River, via indirect flow, and that the San Gabriel River is a part of the San Gabriel River Watershed.

[2] On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the prior permit.

B. The Affected Water

The San Gabriel River and overall San Gabriel River Watershed are waters of the United States. The CWA requires that water bodies such as the San Gabriel River and overall San Gabriel River Watershed meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the San Gabriel River and overall San Gabriel River Watershed include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Gabriel River and overall San Gabriel River Watershed, and threatens the beneficial uses and ecosystem of these watersheds, which includes habitats for threatened and endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as the San Gabriel River, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

Acorn Engineering has submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit since at least 1992. However, information available to Perso indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants[3] and best conventional pollutant control technology ("BCT") for conventional pollutants.[4] Industrial Stormwater Permit § I(D)(32), II(D)(2); Previous Industrial Stormwater Permit, Order Part B(3). The EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.[5] These benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.

Additionally, the Previous Industrial Stormwater Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. *See* Previous Industrial Stormwater Permit pp. VIII. The Previous Industrial Stormwater Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial Stormwater Permit. *Id.* Acorn Engineering falls within these named industrial categories and it must have

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[3] BAT is defined at 40 C.F.R. § 437.1 *et seq.* Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

[4] BCT is defined at 40 C.F.R. § 437.1 *et seq.* Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

[5] The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP") and can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf. *See* 73 Fed. Reg. 56, 572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

complied with the effluent limitations found therein in order to have been in compliance with the Previous Industrial Stormwater Permit during its effective period. In addition, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's 2008 Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP")". *See* Industrial Stormwater Permit § I(D)(33). The 2008 MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.[6] Notably, Acorn Engineering is classified as falling under SIC Code 3432, relating to Plumbing Fixture Fittings and Trim, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Total Aluminum; (v) Total Iron; (vi) Total Zinc; and (viii) Nitrate plus Nitrite Nitrogen. Based on Acorn Engineering's self-reporting data and/or lack thereof, Acorn Engineering has not met this requirement and was in violation of the Previous Stormwater Permit over a period of approximately five (5) years.

Acorn Engineering's self-reporting of industrial stormwater discharges and/or lack thereof show a pattern of exceedances of Benchmark values and/or a failure to adequately monitor numerical pollutant discharge values in every instance of self-reporting. *See* Attachment 2. This pattern of a exceedances of benchmark values and/or a lack of self-reporting indicate that Acorn Engineering has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit and Previous Industrial Stormwater Permit. Perso alleges and notifies Acorn Engineering that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed benchmark values for Aluminum, Iron, Zinc, and Nitrate plus Nitrite Nitrogen. Furthermore, Acorn Engineering has submitted no testing results whatsoever in the 2013-2014, 2015-2016, or the current 2016-2017 annual reporting period.

Acorn Engineering's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT and BCT based levels of control also demonstrate that Acorn Engineering has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Acorn Engineering's failure to develop and/or implement adequate pollution controls to meet BAT and BCT and the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Acorn Engineering's discharges stormwater without meeting BAT/BCT. Perso alleges that Acorn Engineering has discharged stormwater containing excessive levels of pollutants from the Facility to the San Gabriel River during at least every significant local rain event over 0.2 inches in the last five (5) years.[7] Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred. Acorn Engineering is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* Industrial Stormwater Permit § III; Previous Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits

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[6] Of note, Acorn Engineering recognizes the requirement to test for these additional SIC code related pollutants, and has explicitly stated it would sample such parameters in every Qualifying Storm Event in which a sampling was taken as part of its Monitoring and Reporting Plan on page 5 of its most recent SWPPP.

[7] Significant local rain events are reflected in the rain gauge data available at: http://www.ncdc.noaa.gov/cdo-web/search.

stormwater discharges to surface or groundwater that adversely impact human health or the environment. *See* Industrial Stormwater Permit § VI(b)-(c); Previous Industrial Stormwater Permit, Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. *See* Industrial Stormwater Permit § VI(a); Previous Industrial Stormwater Permit at Order Part C(2). Applicable WQS are set forth in the California Toxic Rule ("CTR")[8] and Chapter 3 of the Los Angeles Region (Region 4) Water Quality Control Plan (the "Basin Plan").[9] *See* Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for all Inland Surface and Coastal waters of Los Angeles and Ventura Counties, including but not limited to the following:

- Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial users.

- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in natural turbidity attributable to controllable water quality factors shall not exceed 20% where natural turbidity is between 0 and 50 nephelometric turbidity units ("NTU"), and shall not exceed 10% where the natural turbidity is greater than 50 NTU.

- All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.

- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

Perso alleges that Acorn Engineering's stormwater discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on Acorn Engineering's self-reported data submitted to the Los Angeles Regional Water Quality Control Board. These sampling results indicate that Acorn Engineering's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS.

Perso alleges that each day that Acorn Engineering has discharged stormwater from the Facility, Acorn Engineering's stormwater has and/or may have contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the San Gabriel River and overall San Gabriel River Watershed. Perso alleges that Acorn Engineering has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to the San Gabriel River and overall San Gabriel River Watershed during at least every significant local rain event over 0.2 inches in the last five (5) years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or caused or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA Acorn Engineering is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

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[8] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

[9] The Basin Plan is published by the Los Angeles Regional Water Quality Control Board at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml.

C. Failure to Develop and Implement an Adequate Stormwater Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit § A(1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit at Order Part E(2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Acorn Engineering pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, § X(A); Previous Industrial Stormwater Permit Section § A.

Based on information available to Personal Engineering has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit. For Example, Acorn Engineering SWPPP does not include and/or Acorn Engineering has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the data in Attachment 2. For example, Acorn Engineering has clearly failed to implement the Monitoring and Reporting Program ("MRP") described on page 5 of its most recent SWPPP on a consistent basis for a period of at least five (5) reporting periods.

Accordingly, Acorn Engineering has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit, and Acorn Engineering will continue to be in violation every day until it develops and implements an adequate SWPPP. Acorn Engineering is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § B(1) and Order Part E(3). The Industrial Stormwater Permit requires that MRP ensure that each the facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by § X(A) of the Industrial Stormwater Permit and/or §A Previous Industrial Stormwater Permit.

The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § at Section B. The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*

Acorn Engineering has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater permit. For example, the data in Attachment 2 indicates that Acorn Engineering's monitoring program has not ensured that stormwater dischargers are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by the Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. Additionally, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's 2008 Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP")". The 2008 MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.[10] Notably, Acorn Engineering is classified as falling under SIC Code 3432, relating to Plumbing Fixture Fittings and Trim, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Total Aluminum; (v) Total Iron; (vi) Total Zinc; and (viii) Nitrate plus Nitrite Nitrogen. As previously stated, and in clear violation of the terms of the Industrial Stormwater Permit, Acorn Engineering has consistently reported benchmark exceedances and/or failed to report testing results for any applicable effluent limitation in their annual reports for the past five (5) annual reporting periods. *See* Attachments 2, 3. Therefore, the data in Attachment 2 indicates that Acorn Engineering's monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B.

As a part of the MRP, the Industrial Stormwater Permit specifies that Facility operators shall collect a total of four (4) stormwater samples throughout an annual reporting period. Specifically the Industrial Stormwater Permit requires, "The discharger to collect and analyze samples from two (2) Qualifying Storm Events ('QSE's) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)." Industrial Stormwater Permit § XI B(2).[11] Furthermore, should facility operators fail to collect samples from the first storm event of the wet season, they are still required to collect samples from two other storm events during the wet season, and explain in the annual report why the first storm event was not sampled. *Id.* Despite this requirement Acorn Engineering has submitted the annual report for the 2013-2014 and 2015-2016 reporting periods with no testing data whatsoever, and submitted the annual report for the 2014-2015 reporting period with testing data from only one (1) QSE. Moreover, Acorn Engineering has failed to adequately explain why such sampling was not included.

The Industrial Stormwater Permit also requires dischargers to include laboratory reports with their Annual Reports submitted to the Regional Board. *See* Industrial Stormwater Permit, Fact Sheet § O and/or Previous Industrial Stormwater Permit § B(14). Notably, Acorn Engineering has not submitted any laboratory reports with testing data for any QSE in the 2013-2014 and 2015-2016 annual reporting periods, and has submitted laboratory for only one (1) QSE in the 2014-2015 reporting period. Additionally, Acorn Engineering has failed to adequately explain why such sampling was not included.

As a result of Acorn Engineering's failure to adequately develop and/or implement an adequate MRP at the Facility, Acorn Engineering has been in daily and continuous violation of the Industrial

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[10] Of note, Acorn Engineering recognizes the requirement to test for these additional SIC code related pollutants, and has explicitly stated it would sample such parameters in every Qualifying Storm Event in which a sampling was taken as part of its Monitoring and Reporting Plan on page 5 of its most recent SWPPP.

[11] Under the Previous Industrial Stormwater Permit, only two samplings per year was required, specifically, from "the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *See* Previous Industrial Stormwater Permit § B(5)(a).

Stormwater Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. Acorn Engineering will continue to be in violation of the monitoring and reporting requirement each day that Acorn Engineering fails to adequately develop and/or implement an effective MRP at the Facility. Acorn Engineering is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES Permit issued pursuant to Section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Acorn Engineering sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." Industrial Stormwater Permit, § III; Previous Industrial Stormwater Permit, Order Part A(1). Because Acorn Engineering has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a)

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

Acorn Engineering Co. is the person responsible of the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

Personal Privacy
Personal Privacy
Whittier, CA 90606
Personal

VI. COUNSEL

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esmith@brodsky-smith.com
Ryan P. Cardona, Esquire
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VII. REMEDIES

Pers intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Acorn Engineering for the above-referenced violations. Perso will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition Perso will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Acorn Engineering in this action. The CWA imposes civil penalty liability of up to $37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Perso will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Perso and his Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

Evan J. Smith, Esquire
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ATTACHMENT 1: EPA BENCHMARKS AND WATER QUALITY STANDARDS FOR DISCHARGES TO FRESHWATER

A. EPA Benchmarks, 2008 Multi-Sector General Permit ("MSGP")

Parameter	Units	Benchmark Value	Source
pH	pH Units	Less than 6.0 Greater than 9.0 (Instantaneous)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Oil & Grease	Mg/L	25 (Instantaneous) 15 (Annual)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Total Suspended Solids	Mg/L	400 (Instantaneous) 100 (Annual)	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Aluminum, Total	Mg/L	0.75	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Iron, Total	Mg/L	1.0	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Zinc, Total	Mg/L	0.26*	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Nitrate plus Nitrate Nitrogen	Mg/L	0.68	2008 MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2

* Dependent upon the hardness level of the receiving water.

B. Water Quality Standards – Discharge Limitations and Monitoring Requirements (40 CFR Part 131.38 (California Toxics Rule or CTR), May 18, 2000)

Parameter	Units	Water Quality Objectives		Source
		4- Day Average	1-Hr Average	
Lead	Mg/L	0.0081	0.21	**40 CFR Part 131.38**
Zinc	Mg/L	0.081	0.090	**40 CFR Part 131.38**

ATTACHMENT 2: TABLE OF EXCEEDENCES FOR ACORN ENGINEERING CO.

The following table contains each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of CFR and/or Basin Plan Water Quality Standards. All EPA Benchmarks and CFR and/or Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sample Date	Parameter	Result	Unit
2016-2017	NO TESTING RESULTS REPORTED FOR ANY PARAMETER			
2015-2016	NO TESTING RESULTS REPORTED FOR ANY PARAMETER			
2014-2015	12/02/2014	Zinc, Total	0.68	Mg/L
2014-2015	12/02/2014	Nitrate plus Nitrite Nitrogen	1.9	Mg/L
2014-2015	12/02/2014	Iron, Total	1.6	Mg/L
2014-2015	12/02/2014	Aluminum, Total	1.2	Mg/L
2014-2015	12/02/2014	Zinc, Total	0.67	Mg/L
2014-2015	12/02/2014	Nitrate plus Nitrite Nitrogen	1.8	Mg/L
2014-2015	12/02/2014	Iron, Total	1.7	Mg/L
2014-2015	12/02/2014	Aluminum, Total	1.3	Mg/L
2014-2015	12/02/2014	Zinc, Total	0.69	Mg/L
2014-2015	12/02/2014	Nitrate plus Nitrite Nitrogen	1.9	Mg/L
2014-2015	12/02/2014	Iron, Total	1.8	Mg/L
2014-2015	12/02/2014	Aluminum, Total	1.3	Mg/L
2014-2015	12/02/2014	Zinc, Total	0.7	Mg/L
2014-2015	12/02/2014	Nitrate plus Nitrite Nitrogen	1.9	Mg/L
2014-2015	12/02/2014	Iron, Total	2.2	Mg/L
2014-2015	12/02/2014	Aluminum, Total	1.6	Mg/L
2013-2014	NO TESTING RESULTS REPORTED FOR ANY PARAMETER			
2012-2013	05/06/2013	Zinc, Total	1.2	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	1.7	Mg/L
2012-2013	05/06/2013	Zinc, Total	1.2	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	1.8	Mg/L
2012-2013	05/06/2013	Zinc, Total	1.2	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	1.7	Mg/L
2012-2013	05/06/2013	Zinc, Total	1.2	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	1.8	Mg/L
2012-2013	05/06/2013	Zinc, Total	.55	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	2.3	Mg/L
2012-2013	05/06/2013	Zinc, Total	.53	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	2.3	Mg/L
2012-2013	05/06/2013	Zinc, Total	.53	Mg/L
2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	2.2	Mg/L
2012-2013	05/06/2013	Zinc, Total	.54	Mg/L

2012-2013	05/06/2013	Nitrate plus Nitrite Nitrogen	2.5	Mg/L
2012-2013	11/29/2012	Zinc, Total	.46	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.9	Mg/L
2012-2013	11/29/2012	Zinc, Total	.44	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.8	Mg/L
2012-2013	11/29/2012	Zinc, Total	.44	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.9	Mg/L
2012-2013	11/29/2012	Zinc, Total	.44	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.9	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.1	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.1	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.0	Mg/L
2012-2013	11/29/2012	Nitrate plus Nitrite Nitrogen	1.1	Mg/L
2012-2013	NO TESTING RESULTS REPORTED FOR ANY PARAMETER			

* Acorn Engineering has failed to submit testing results for any required effluent limitations contained in the submitted in 2013-2014 or 2015-2016 annual reporting periods.

*Acorn Engineering's submitted 2014-2015 Annual Report contains test results for required effluent limitations for only one (1) QSEs rather than the required two (2) QSEs under the Previous Industrial Stormwater Permit.

* Acorn Engineering has failed to submit any Laboratory Reports for the 2013-2014 or 2015-2016 annual reporting periods, and, and has failed to submit Laboratory Reports with testing data for a second QSE in the 2014-2015 annual reporting period.

ATTACHMENT 3: ALLEGED DATES OF EXCEEDANCES BY ACORN ENGINEERING CO.
January 1, 2012 – February 28, 2017

Days with precipitation two-tenths of an inch or greater, as reported by NOAA's National Climatic Data Center, Stations: Covina City Yard FC387B, CA US, GHCND:USC0004209, when a stormwater discharge from the Facility is likely to have occurred. http://www.ncdc.noaa.gov/cdo-web/search

2012	2013	2014	2015	2016	2017
1/21	1/24	1/30	1/11	1/6	1/5
1/24	1/25	2/27	1/12	1/7	1/8
2/16	2/20	2/28	4/8	1/31	1/10
2/27	3/8	3/1	4/26	2/18	1/11
3/18	5/6	3/2	5/8	3/5	1/12
3/26	5/7	4/2	5/15	3/7	1/18
4/1	10/10	11/1	7/19	3/8	1/19
4/11	11/21	12/1	7/20	3/12	1/20
4/14		12/3	9/15	4/9	1/22
4/26		12/4	9/16	5/6	1/23
11/15		12/12	11/4	10/22	2/5
11/16		12/13	12/11	11/20	2/6
12/1		12/17	12/14	11/27	2/10
12/2			12/19	12/15	2/17
12/3				12/21	2/27
12/13				12/22	
12/18				12/23	
12/24				12/30	
12/26				12/31	
12/30					